

CSD 1160 [05/15/03]

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File RCO # 7777.34154

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West "F" Street, San Diego, California 92101-6991

In Re

Carlos J. Estrada, Jr., Maria L. Estrada

Debtor.

BANKRUPTCY NO. 12-05376-LT7

US Bank National Association, as Trustee for the holders of Bear Stearns

Moving Party

RS NO. RCO-1

Carlos J. Estrada, Jr., Maria L. Estrada, Christopher R. Barclay

Respondent(s)

MOTION FOR RELIEF FROM AUTOMATIC STAY



REAL PROPERTY



PERSONAL PROPERTY

Movant in the above-captioned matter moves this Court for an Order granting relief from the automatic stay on the grounds set forth below.

1. A Petition under Chapter ☒ 7 ☐ 11 ☐ 12 ☐ 13 was filed on April 16, 2012.
Conversion Date
2. Procedural Status:
 - a. ☒ Name of Trustee Appointed (if any): Christopher R. Barclay
 - b. ☐ Name of Attorney of Record for Trustee (if any):
 - c. ☐ (Optional) Prior Filing Information:
Debtor has previously filed a Bankruptcy Petition on: _____
If applicable, the prior case was dismissed on: _____
 - d. ☐ (If Chapter 13 case): Chapter 13 Plan was confirmed on _____ or a confirmation hearing is set for _____.

Movant alleges the following in support of its Motion:

1. ☒ The following real property is the subject of this Motion:
 - a. Street address of the property including county and state:
2121-2123 Harrison Avenue
San Diego, CA 92113
San Diego County
 - b. Type of real property (e.g., single family residence, apartment building, commercial, industrial, condominium, unimproved):
Other Single Family Residence
 - c. Legal description of property is attached as Exhibit A.

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d. If a chapter 11 or 13 case and if non-payment of any post-petition payment is a ground for relief, attach the accounting required by Local Bankruptcy Rule 4001-2(a)(4) as Exhibit B.

e. *Fair market value of property as set forth in the Debtor's schedules: \$ 203,578.00.

f. *Nature of Debtor's interest in the property:
Sole Owner

2. ☐ The following personal property is the subject of this Motion (*describe property*):

a. Fair market value of property as set forth in the Debtor's schedules: \$ _____.

b. Nature of Debtor's interest in the property:

3. *Fair market value of property according to Movant: \$ 203,578.00.

4. *Nature of Movant's interest in the property: Deed of Trust

5. *Status of Movant's loan:

a. Balance owing on date of Order for Relief: \$ 497,107.03

b. Amount of monthly payment: \$ 2,684.59

c. Date of last payment: December 12, 2011

d. If real property,
i. Date of default: September 1, 2011

ii. Notice of Default recorded on: _____

iii. Notice of Sale published on: _____

iv. Foreclosure sale currently scheduled for: _____

e. If personal property,

i. Pre-petition default: \$ _____ No. of months: _____

ii. Post-petition default: \$ _____ No. of months: _____

6. (*If Chapter 13 Case, state the following:*)

a. Date of post-petition default: _____

b. Amount of post-petition default: \$ _____

7. Encumbrances:

a. Voluntary encumbrances on the property listed in the Schedules or otherwise known to Movant:

Lender Name	Principal Balance	(IF KNOWN) Pre-Petition Arrearages Total Amount - # of Months		Post-Petition Arrearages Total Amount - # of Months	
1st: Movant	470,000.00	21,476.72	8	2,684.59	1
2nd:					
3rd:					
4th:					
Totals for all Liens:	\$ 470,000.00	\$ 21,476.72		\$ 2,684.59	

b. Involuntary encumbrances of record (e.g., tax, mechanic's, judgment and other liens, lis pendens) as listed in schedules or otherwise known to Movant:

☐ See attached page, if necessary.

*Separately filed Declaration required by Local Bankruptcy Rule 4001-2(a)(5).

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8. Relief from the automatic stay should be granted because:
- ☒ Movant's interest in the property described above is not adequately protected.
 - ☒ Debtor has no equity in the ☒ real property ☐ personal property described above and such property is not necessary to an effective reorganization.
 - ☐ The property is "single asset real estate", as defined in 11 U.S.C. § 101(51B), and 90 days (or _____ days as ordered by this court) have passed since entry of the order for relief in this case, and
 - the Debtor/Trustee has not filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; and
 - the Debtor/Trustee has
 - ☐ not commenced monthly payments to each creditor whose claim is secured by the property (other than a claim secured by a judgment lien or by an unmatured statutory lien), or
 - ☐ commenced payments, but such payments are less than an amount equal to interest at a current fair market rate on the value of each creditors' interest in the property.
 - ☐ *Other cause exists as follows (*specify*): ☐ See attached page.

When required, Movant has filed separate Declarations pursuant to Local Bankruptcy Rule 4001-2(a)(5) and (6).

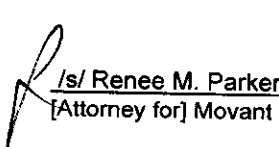
Movant attaches the following:

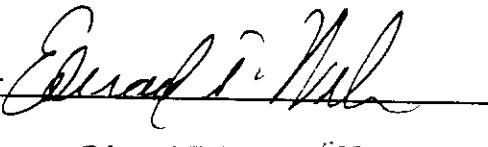
- ☒ Other relevant evidence:
Exhibit A (Legal description); Exhibit B (Note/Deed); Exhibit C (Schedules A and D); Exhibit D (Assignment of Deed of Trust)
- ☐ (Optional) Memorandum of points and authorities upon which the moving party will rely.

WHEREFORE, Movant prays that this Court issue an Order granting the following:

- ☒ Relief as requested.
- ☒ Other:
 - a) the Order for relief be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code;
 - b) the 14-day provided by Bankruptcy Rule 4001 (a)(3) be waived;
 - c) if relief from stay is not granted, Movant respectfully requests the Court to order adequate protection.

Dated: 7/3/12


/s/ Renee M. Parker
[Attorney for] Movant


Edward T. Weber Esq.